



The Comptroller General
of the United States

Washington, D.C. 20548

Regrade

Decision

Matter of: Michael L. Cook, Inc.--Request for
Reconsideration

File: B-234940.2

Date: May 11, 1989

DIGEST

Dismissal of protest of alleged ambiguous technical requirements in a solicitation issued by a government prime construction contractor for the installation of demountable wall partitions is affirmed, since the General Accounting Office has no jurisdiction to review a subcontract awarded by a prime contractor when the subcontract award is not made by or for the government.

DECISION

Michael L. Cook, Inc., requests reconsideration of the dismissal of its protest alleging ambiguous technical requirements in a solicitation issued by the W&J Construction Corporation pursuant to its contract No. NAS10-11476 with the National Aeronautics and Space Administration (NASA). We dismissed the protest because it did not involve any of the limited circumstances under which we review challenges to subcontract awards under our Bid Protest Regulations. 4 C.F.R. § 21.3(m)(10) (1988).

We affirm the prior dismissal.

W&J was awarded a contract by NASA on January 29, 1988, for the design and construction of a six-story building on NASA's Kennedy Space Center in Florida. One portion of the contract work involves the installation of demountable wall partitions inside the building. W&J issued a solicitation for these wall partitions on January 27, 1989. Five proposals were received by the February 8 closing date and W&J awarded the subcontract to American Business Interiors of Melbourne, Florida, which had submitted the lowest acceptable bid.

Cook submitted its protest to our Office on March 21. Cook argued that the minimum technical requirements contained in the solicitation were ambiguous. Our Office dismissed the protest because we only review subcontract awards by the

045396/138620

government's prime contractors where the award is "by or for the government." Bid Protest Regulations, 4 C.F.R. § 21.3(m)(10). On March 28, Cook requested reconsideration of its protest, arguing that it was not protesting the solicitation of the subcontractor by the contractor, but rather the ambiguous wording of the solicitation specifications.

As noted above, under the Bid Protest Regulations, we have no jurisdiction to review Cook's protest because we review only subcontractor awards where the award is "by or for the government." Basically, a subcontract is considered to be by or for the government where the prime contractor principally provides large-scale management services to the government and, as a result, generally has ongoing purchasing responsibility. In effect, the prime contractor acts as a middleman or a conduit between the government and the subcontractor. American Nuclear Corp., B-228028, Nov. 23, 1987, 87-2 CPD ¶ 503. Such circumstances may exist where the prime contractor operates and manages a government facility, Westinghouse Electric Co., B-227091, Aug. 10, 1987, 87-2 CPD ¶ 145, otherwise provides large-scale management services, Union Natural Gas Co., B-224607, Jan. 9, 1987, 87-1 CPD ¶ 44, serves as an agency's construction manager, C-E Air Preheater Co., Inc., B-194119, Sept. 14, 1979, 79-2 CPD ¶ 197, or functions primarily to handle the administrative procedures of subcontracting with vendors effectively selected by the agency. University of Michigan, et al., 66 Comp. Gen. 538 (1987), 87-1 CPD ¶ 643. Except in these limited circumstances in which the prime contractor is basically acting as the government's agent, a subcontract awarded by a government contractor in the course of performing a prime contract generally is not considered "by or for the government." Ames Co., Inc.--Request for Reconsideration, B-233314.2, et al., Dec. 15, 1988, 88-1 CPD ¶ 597.

W&J is not providing large-scale management services as described above, but rather is performing a contract to design and build a six-story building. Therefore, the solicitation under which the subcontract was awarded to American Business Interiors is not considered to be a solicitation issued "by or for the government." Consequently, the General Accounting Office (GAO) has no jurisdiction to consider whether the terms of this solicitation were ambiguous.

Cook has also requested that a conference be held on the merits of its protest. However, no relevant purpose would be served by holding such a conference since the GAO has no jurisdiction over this matter. Engineering and Professional Services, Inc., B-228437, Nov. 3, 1987, 87-2 CPD ¶ 439.

Accordingly, the dismissal is affirmed.



James F. Hinchman
General Counsel